U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 02 2010

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an insurance company. It seeks to employ the beneficiary permanently in the United States as a computer software engineer (business application developer III) pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (Form ETA 750), which was certified by the Department of Labor (DOL).

The director determined that the Form ETA 750 failed to demonstrate that the job requires a professional holding an advanced degree or the equivalent and, therefore, the beneficiary cannot be found qualified for classification as a member of the professions holding an advanced degree. 8 C.F.R. § 204.5(k)(4). The director denied the petition accordingly.

The record shows that the appeal is properly filed and timely. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

On appeal, counsel argues that the petitioner has indicated that it would accept a combination of education and experience equivalent to a Bachelor's degree plus five years of experience is not a lesser requirement than a bachelor's degree and five years of experience, it is the same requirement. Therefore, the labor certification demonstrates that the proffered position requires a professional holding an advanced degree.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

Section 203(b)(2) of the Act also includes aliens "who because of their exceptional ability in the sciences, arts or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States." The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered."

Here, the Form I-140 was filed on May 14, 2007. On Part 2.d. of the Form I-140, the petitioner indicated that it was filing the petition for a member of the professions holding an advanced degree or an alien of exceptional ability.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[1]

The regulation at 8 C.F.R. § 204.5(k)(4) states in pertinent part that "[t]he job offer portion of an individual labor certification, Schedule A application, or Pilot Program application must demonstrate that the job requires a professional holding an advanced degree or the equivalent of an alien of exceptional ability."

In this case, the job offer portion of the Form ETA 750 sets forth the minimum requirements for the proffered position. Item 14 reflects that the minimum level of education required for the position is a bachelor's degree, and that the proffered position requires five years of experience in the job offered or related field. The petitioner sets forth other special requirements on Item 15. Among other things, the petitioner indicates that it would accept "BS/BA in Computer Science or equivalent combination of education and experience." The underlying labor certification was certified on January 29, 2007 with these special requirements. Accordingly, the requirements of the proffered position may be met with combinations of a degree less than a four-year U.S. bachelor's degree and experience, and thus, the job offer portion of the Form ETA 750 does not require a U.S. bachelor's degree as the minimum educational requirements for the proffered position.

As quoted above, the regulation at 8 C.F.R. § 204.5(k)(2) clearly provides that an advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. The language of the regulation clearly indicates that for the classification of a member of professions holding an advanced degree, the proffered position must require a single source U.S. baccalaureate degree or a foreign equivalent degree as a minimum educational requirement. Any combination of education less than a bachelor's degree and experience cannot be considered a single source U.S. baccalaureate degree or foreign equivalent degree for the classification for a member of the professions holding an advanced degree. On appeal counsel cites *Turbomotive, Inc. vs. Weiss*, Civil No. H-88-563(JAC) (D.Conn, July 27, 1989) to support his assertion. However, *Turbomotive, Inc. vs. Weiss* is distinguished from the instant case. While *Turbomotive* dealt with H-1B nonimmigrant petition, the instant case is for an immigrant petition for the classification as a member of the professions with an advanced degree. The rule to equate three years of experience for one year of education may apply to non-immigrant H1B petitions, however, it does not apply to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(5). Therefore, the petition cannot be approved for the requested classification as a member of the professions holding an

[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). However, counsel does not submit any additional evidence with his brief in support of the appeal.

advanced degree. In this matter, the appropriate remedy would be to file another petition for classification as a professional or a skilled worker pursuant to section 203(b)(3)(i) of the Act.

Beyond the director's decision, the AAO has identified an additional ground of ineligibility. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The record shows that the beneficiary received a bachelor of commerce degree and a master of computer applications degree from Osmania University in India in 1996 and 1999 respectively. Counsel asserts that the beneficiary possesses both bachelor's and master's degrees equivalent to a U.S. bachelor's and a U.S. master's degrees based on an evaluation report from [redacted] of The [redacted] U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *Matter of Shah*, 17 I&N Dec. at 245. In the instant case, the beneficiary's three-year bachelor of commerce degree from Osmania University in India is not the foreign equivalent degree to a U.S. baccalaureate degree.

We have also reviewed the Electronic [redacted] created by the [redacted] according to its website [redacted] is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for [redacted] is "a web-based resource for the evaluation of foreign educational credentials."

EDGE confirms that while a master of science degree awarded upon completion of two years of study beyond the two- or three-year bachelor's degree in India is not the foreign equivalent degree to a U.S. master's degree, it represents attainment of a level of education comparable to a bachelor's degree in the United States. In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. 8 C.F.R. § 204.5(k)(2). Here

the beneficiary's master of computer applications degree from Osmania University represents attainment of a level of education comparable to a bachelor's degree in computer science in the United States.

The beneficiary has a "United States baccalaureate degree or a foreign equivalent degree," and thus, meet the minimum level of education required for the equivalent of an advanced degree, namely a bachelor's degree, for preference visa classification under section 203(b)(2) of the Act. However, to qualify for the second preference classification, the beneficiary must establish that he possessed at least five years of progressive experience in the specialty after his bachelor's equivalent degree but prior to the priority date. In fact, the Form ETA 750 also clearly requires five years of experience in the job offered or related occupation.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

> Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

The record contains a letter pertinent to the beneficiary's requisite experience. This letter is dated January 31, 2005, on the company letterhead and written and signed by Pundarika Bibireddy as Chief Operating Office of Software Research Group, Inc. The letter verifies that the beneficiary worked with that company as a programmer analyst from January 2003 to September 2004 on a full-time basis. The letter also includes a specific description of the duties performed by the beneficiary in the position. However, this letter verifies only 20 months of experience. The record does not contain any other employment verification documents for the beneficiary. Therefore, the petitioner failed to establish the beneficiary's five years of progressive experience in the specialty with regulatory-prescribed evidence.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.